

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLORADO**

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| In re |) | |
| |) | |
| NITROCRETE, LLC |) | Case No. 21-15739-KHT |
| EIN: 84-4321060 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |

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| In re |) | |
| |) | |
| NITRO HOLDINGS, LLC |) | Case No. 21-15740 |
| EIN: 84-4342645 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |

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| In re |) | |
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| NITROCRETE IP, LLC |) | Case No. 21-15741 |
| EIN: 84-4364002 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |

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| In re |) | |
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| NITROCRETE EQUIPMENT, LLC |) | Case No. 21-15742 |
| EIN: 84-4360818 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |

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| In re |) | |
| |) | |
| NITROCRETE HOLDINGS, LLC |) | Case No. 21-15743 |
| EIN: 85-3946334 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession |) | |

MOTION FOR ENTRY FOR ENTRY OF: (I) AGREED ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL; (II) FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL; (III) GRANTING ADEQUATE PROTECTION TO VECTRA BANK; (IV) SETTING A FINAL HEARING ON USE OF CASH COLLATERAL; AND (V) GRANTING RELATED RELIEF

NITROcrete, LLC, Nitro Holdings, LLC, NITROcrete IP, LLC, NITROcrete Equipment, LLC, and NITROcrete Holdings, LLC, the debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “**Debtor**,” and collectively, the “**Nitro Debtors**”), by and through their undersigned proposed counsel, hereby request, pursuant to 11 U.S.C. § 362(c)(2)(A), Fed. R. Bankr. P. 4001(b) and 9014, and L.B.R. 4001-2, 2081-1 and 9013-1, entry of an interim order, substantially in the form of agreed order attached hereto, authorizing use of cash collateral on an interim basis, granting adequate protection in connection therewith, entry of a final order authorizing use of cash collateral, setting a final hearing on use of cash collateral, and granting related relief. In support of this motion, the Nitro Debtors state as follows:¹

SUMMARY OF MATERIAL TERMS

1. Pursuant to Fed. R. Bankr. P. 4001(b)(1)(B)(i), Zions Bancorporation, N.A. d/b/a Vectra Bank Colorado (“**Vectra**”) has an interest in the Cash Collateral (as defined below).

2. Pursuant to Fed. R. Bankr. P. 4001(b)(2)(B)(ii), the purposes for the use of Cash Collateral is to permit, among other things, the orderly continuation of the operation of the Nitro Debtors’ businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll and to satisfy other working capital needs and other costs associated with Nitro Debtors’ business operations during the chapter 11 cases.

3. Pursuant to Fed. R. Bankr. P. 4001(b)(1)(B)(iii) and Local Bankruptcy Rule 4001-2(a)(1), the essential terms of the Agreed Interim Cash Collateral Order are summarized as follows:²

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| Maximum loan amount: | N/A |
| Borrowing conditions: | N/A |
| Interest rate: | N/A |
| Fees, costs and charges payable by Debtors: | N/A |
| Maturity: | N/A |
| Events of default: | The Debtors’ right to use the Cash Collateral as herein authorized shall terminate on 5:00 p.m. (prevailing mountain time) on |

¹ Unless otherwise specified, all references herein to “Section,” “§,” “Bankruptcy Code” and “Code” refer to the U.S. Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

² This summary of the Agreed Interim Cash Collateral Order provided herein is provided for the benefit of the Court and parties in interest. In the event of an inconsistency between the summary provided herein and the Agreed Interim Cash Collateral Order, the the Agreed Interim Cash Collateral Order shall control.

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| | <p>December 17, 2021 or as otherwise ordered by the Court. Any Termination shall not affect the validity, priority or enforceability of any and all rights, remedies, benefits and protections provided to Bank under this Interim Order as of the Termination Date, which rights, remedies, benefits and protections shall survive such Termination. <i>Agreed Interim Cash Collateral Order</i>, p. 11, ¶ 7.</p> <p>An “Event of Default” shall occur upon: (a) The failure by the Debtors to comply with any of the material terms or conditions of this Interim Order, including, without limitation, the failure by the Debtors to comply with the Approved Budget pursuant to the terms of Paragraph C; (b) Without the prior written consent of Bank, the appointment of a Chapter 11 trustee or examiner; (c) Without the prior written consent of Bank, the issuance to a taxing authority or the granting of a motion seeking to grant a third party a security interest or lien upon all or part of any property of the Debtors that has a priority which is senior to, or equal with, Bank’s Prepetition Liens or the Adequate Protection Liens in all or any portion of such property; (d) Without the prior written consent of Bank, the granting by the Court of a motion for relief from the automatic stay in favor of any party, other than Bank, with respect to any material portion of the Prepetition Collateral or Postpetition Collateral (including, but not limited to, any Cash Collateral); or (e) The conversion of this case to a case under Chapter 7 of the Code; (f) Without the prior written consent of Bank, the granting of any motion to amend or modify the terms of the <i>Agreed Interim Cash Collateral Order</i>. <i>Agreed Interim Cash Collateral Order</i>, pp. 15-16, ¶ 13.</p> |
| <i>Remedies in the event of default:</i> | <p>Debtors shall be prohibited from using the Cash Collateral, absent further order of this Court, upon Termination, including Termination effected through the service by Bank of written notice to the Debtors and its counsel, the Court, any Committee and its counsel (as and to the extent applicable) and the U.S. Trustee that an Event of Default has occurred and is continuing. <i>Agreed Interim Cash Collateral Order</i>, p. 15, ¶ 13.</p> |
| <i>Use of funds limitations:</i> | <p>Cash Collateral shall be used by the Debtors in accordance with the Initial Approved Budget in substantially the same form as that which is attached as Exhibit A to the <i>Agreed Interim Cash Collateral Order</i>. <i>Agreed Interim Cash Collateral Order</i>, pp. 6-7, ¶ C; pp. 10-11, ¶ 6.</p> |
| <i>Protections afforded</i> | <p>The Adequate Protection Liens granted to Vectra shall not be subordinated or be made <i>pari passu</i> with any other lien under §§</p> |

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| <i>under §§ 363 and 364:</i> | 363 and 364 of the Code or otherwise. <i>Agreed Interim Cash Collateral Order</i> , p. 13, ¶11(a). |
| <i>Line-item budget:</i> | <i>See Initial Approved Budget attached as <u>Exhibit A</u>.</i> |

4. The Agreed Interim Cash Collateral Order contains certain provisions identified in L.B.R. 4001-2(a)(2), including, but not limited to, provisions binding the Nitro Debtors' estates with respect to the validity, perfection, or amount of the Vectra's lien and provisions binding the Nitro Debtors' estates with respect to the relative priorities of Vectra's lien. *See Agreed Interim Cash Collateral Order*, pp. 3-6, 12-14. Such provisions are necessary for the Nitro Debtors to obtain Vectra's consent for use of the Cash Collateral, absent which Vectra may not have provided such consent. As more fully discussed below, the Nitro Debtors have a critical need for use of Cash Collateral to pay operating expenses associated with its business operations and use of the Cash Collateral is necessary to the Nitro Debtors' ability to preserve and maintain going-concern value of their businesses for the benefit of creditors and all parties in interest. The use of Cash Collateral is necessary to avoid immediate and irreparable harm to the Nitro Debtors' bankruptcy estates.

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the District of Colorado (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein is § 362(c)(2)(A), Fed. R. Bankr. P. 4001(b) and 9014, and L.B.R. 4001-2, 2081-1 and 9013-1.

BACKGROUND

7. On November 18, 2021 (the "**Petition Date**"), the Nitro Debtors separately filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court, commencing the above-captioned chapter 11 cases.³

8. Nitro Holdings, LLC is a holding company with four wholly owned subsidiaries, NITROcrete LLC, NITROcrete IP, LLC, NITROcrete Equipment, LLC, and NITROcrete Holdings, LLC. NITROcrete Holdings, LLC is a holding company with two non-debtor, wholly owned subsidiaries, NITROcrete Brazil and NITROcrete Mexico.

9. The Nitro Debtors continue to operate their businesses as debtors-in-possession

³ Contemporaneously with the filing of this motion, NITROcrete, LLC filed a motion in its chapter 11 case, Case No. 21-15739, seeking entry of an order, pursuant to Fed. R. Bankr. P. 1015(b) and L.B.R. 1015-1 authorizing and directing the joint administration of the Nitro Debtors' related chapter 11 cases for procedural purposes only, and further requesting use of the combined caption contained in this motion.

pursuant to §§ 1107(a) and 1108. No creditors' committee has been appointed in this case by the Office of the United States Trustee, nor has any trustee or examiner been requested or appointed.

10. A description of the Nitro Debtors' business, the reasons for filing this chapter 11 case and the relief sought from this Court to allow for a smooth transition into operations under chapter 11 is set more fully described in the Declaration of Kathleen M. Walton in Support of First Day Relief (the "**First Day Declaration**"), which the Nitro Debtors hereby adopt and incorporates as if fully set forth herein.

11. Vectra is the Nitro Debtors' senior lender. Prior to the Petition Date, the Nitro Debtors and Vectra entered into a Credit and Security Agreement, dated as of February 6, 2020, as amended by the First Amendment to Credit and Security Agreement, dated as of January 8, 2021, and as further amended by the Joinder and Second Amendment to Credit and Security Agreement, dated as of July 21, 2021 (collectively, as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). The Credit Agreement, amendments thereto, and all documents, instruments, and agreements executed in connection therewith or related thereto are hereinafter referred to as the "**Loan Documents**."

12. Pursuant to the Loan Documents, the Nitro Debtors incurred loan obligations (the "**Secured Obligations**") in favor of Vectra. Those Secured Obligations were in default as of the Petition Date. As of the Petition Date, the Secured Obligations owed to Vectra, without defense, counterclaim or offset of any kind, totaled no less than \$7,214,270.86, plus accrued and unpaid interest with respect thereto and any additional fees, costs, expenses, and other obligations incurred in connection therewith due under the Loan Documents.

13. As set forth in the Loan Documents, as security for the Secured Obligations the Nitro Debtors granted to Vectra a first-priority valid, perfected and enforceable security interest (the "**Prepetition Liens**") against all collateral previously pledged by the Nitro Debtors and previously perfected by Vectra as of the Petition Date to secure repayment of the Secured Obligations under the Loan Documents (the "**Prepetition Collateral**").⁴

14. The Nitro Debtors acknowledge all of their cash, negotiable instruments, deposit accounts, or other cash equivalents in any form, including, without limitation, income, proceeds, products, revenues or profits of property or cash arising from the collection, sale, lease, disposition, use, or conversion to cash of any property, or fees, charges, accounts, or other payments, and such other forms of property as are contemplated under § 363, constitute cash collateral of Vectra governed by § 363, whether Vectra's liens or security interests (including, without limitation, any replacement liens or security interests) existed on the Petition Date or arise thereafter, and whether such property that has been converted to cash existed as of the Petition Date or arose or was generated thereafter (collectively, the "Cash Collateral"). Further, the Nitro Debtors acknowledge all of their cash and cash equivalents,

⁴ The Prepetition Collateral does not include titled vehicles owned by Debtor NITROcrete Equipment, LLC (the "Titled Vehicles").

including any cash in deposit accounts, wherever located, and all cash that constitutes proceeds of Prepetition Collateral (as defined in the Loan Documents) are part of the Prepetition Collateral and constitute Cash Collateral subject to the Prepetition Liens of Vectra.

15. The Nitro Debtors lack sufficient funds to support their continued operations during the chapter 11 cases unless they are authorized to use Cash Collateral. Prior to the Petition Date, the Nitro Debtors and Vectra engaged in good faith, arm's length negotiations for use of Cash Collateral on an interim basis under the terms and conditions contained in the attached proposed agreed interim order (the "**Agreed Interim Cash Collateral Order**").

RELIEF REQUESTED

16. By this motion, the Nitro Debtors seek, pursuant to § 362(c)(2)(A), Fed. R. Bankr. P. 4001(b) and 9014, and L.B.R. 4001-2, 2081-1 and 9013-1, entry of an order on an expedited basis, substantially in the form of the Agreed Interim Cash Collateral Order, authorizing use of cash collateral on an interim basis, granting adequate protection to Vectra in connection therewith, entry of a final order authorizing use of cash collateral, setting a final hearing on use of cash collateral (the "**Final Hearing**"), and granting related relief.

BASIS FOR RELIEF REQUESTED

17. The Nitro Debtors intend to continue business operations during the pendency of their chapter 11 cases while seeking a sale of their business operations as a going concern or proposing a chapter 11 plan to reorganize their business affairs. To continue the Nitro Debtors' business operations, maximize the value of the Nitro Debtors' businesses as going concerns, and ensure the fullest possible return to creditors, the Nitro Debtors must immediately use the Cash Collateral in which Vectra has an interest. Without the use of the Cash Collateral, the Nitro Debtors will have insufficient funding to permit, among other things, the orderly continuation of the operation of its businesses, maintain business relationships with vendors, suppliers and customers, make payroll, and satisfy other working capital needs and other costs associated with the Nitro Debtors' business operations.

18. The Nitro Debtors have a critical need for the use of Cash Collateral to pay operating expenses associated with business operations, all in accordance with the Budget (as defined below). The Nitro Debtors lack sufficient available sources of working capital and financing to operate, reorganize or effectuate an orderly wind-down of its remaining business. Indeed, absent the relief requested herein, the Nitro Debtors' operations will be brought to an immediate halt, with damaging consequences for the Nitro Debtors and their bankruptcy estates and creditors. Use of the Cash Collateral is necessary to the Nitro Debtors' ability to preserve and maintain going-concern value of their businesses for the benefit of creditors and all parties in interest. Failure to grant the relief requested herein on an interim basis would result in immediate and irreparable harm to the Nitro Debtors' bankruptcy estates. Accordingly, the use of Cash Collateral during the interim period is necessary to avoid immediate and irreparable harm to the Nitro Debtors' bankruptcy estates. Therefore, the Nitro Debtors, with the agreement and consent of Vectra, propose to use Cash Collateral on an interim basis until such time as the Court schedules a Final Hearing on the use of Cash Collateral. At the Final

Hearing, the Nitro Debtors will seek relief to use Cash Collateral on a final basis during the term of the chapter 11 cases.

19. A debtor's use of property of the estate, including cash collateral, is governed by § 363. Section 363(c)(2) provides:

The trustee may not use, sell, or lease cash collateral under [§ 362(c)(1)] of this subsection unless –

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizing such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2). Additionally, § 363(e) provides that upon request of an entity that has an interest in property to be used by a debtor, the court shall prohibit or condition such use as is necessary to provide adequate protection of such interest. 11 U.S.C. § 363(e).

20. Generally, what constitutes adequate protection is decided on a case-by-case basis. *In re DB Capital Holdings, LLC*, 454 B.R. 804, 822 (Bankr. D. Colo. 2011) (*citing In re Becker Indus.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)) (the application of adequate protection “is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”); *see also In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996).

21. Here, in satisfaction of § 362(c)(2)(A), Vectra, which holds an interest in the Cash Collateral, consents to the Nitro Debtors' use of Cash Collateral on an interim basis under the terms and conditions contained in the attached proposed Agreed Interim Cash Collateral Order.

22. Under the terms of the Agreed Interim Cash Collateral Order, for the Nitro Debtors' use of Cash Collateral the Nitro Debtors propose adequate protection for Vectra's interest in the Cash Collateral. In particular, and as more fully set forth in the attached proposed Agreed Interim Cash Collateral Order, the Nitro Debtors agree to grant Vectra various forms of adequate protection, to the extent of the diminution in value of the Prepetition Liens in the Prepetition Collateral from and after the Petition Date, including, but not limited to, the following (collectively, the “**Adequate Protection Obligations**”):

a. Valid, enforceable, unavoidable and fully and automatically perfected replacement liens and security interests (the “**Adequate Protection Liens**”), supplemental to and in addition to the Prepetition Liens and with the same priority as enjoyed by the Prepetition Liens immediately prior to the Petition Date, in all prepetition and postpetition assets and property (tangible, intangible, real, personal, and mixed) of the Nitro Debtors whether now existing or hereafter acquired or arising, and wherever located, including but not limited to all contracts, accounts, deposit accounts,

chattel paper, inventory, equipment, general intangibles, goods, real property, leases, cash and cash equivalents (including any funds released to the Debtors from escrow or other segregated accounts), claims, causes of action and proceeds thereof (the “**Postpetition Collateral**,” and together with the Prepetition Collateral, the “**Collateral**”); provided, however, that Postpetition Collateral shall not include: (i) the claims and causes of action of the Nitro Debtors or their estates under §§ 502(d), 544, 545, 547, 548, 550 and 553 and any other avoidance actions under the Bankruptcy Code (collectively, the “**Avoidance Actions**”); (ii) commercial tort claims or any proceeds thereof; (iii) Titled Vehicles or any proceeds thereof; or (iv) property received or recovered in respect of any Avoidance Actions, whether by judgment, settlement or otherwise, whether pursuant to federal law or applicable state law (collectively, “**Avoidance Action Proceeds**”).

b. Superpriority administrative expense claims (the “**Superpriority Claims**”) under §§ 503 and 507 against the Nitro Debtors’ estates to the extent that the Adequate Protection Liens do not adequately protect against the diminution in value of the Prepetition Collateral, if any, which Superpriority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, §§ 503(b), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of this case pursuant to § 1112. The Superpriority Claims shall, for purposes of § 1129(a)(9)(A), be payable from and have recourse to all prepetition and postpetition property of the Nitro Debtors and all proceeds thereof, excluding however, Avoidance Action Proceeds.

c. The Nitro Debtors shall comply with all reporting requirements set forth in the Loan Documents and shall file monthly operating reports with the Court each month as required by the U.S. Trustee and serve such reports on Vectra. Additionally, the Nitro Debtors shall timely report and shall provide to Vectra on a weekly basis (commencing December 1, 2021 and every week thereafter): collection reports of accounts receivable and cash sales; a listing of new accounts receivable and invoices relating to the same; an aging report of accounts receivable and accounts payable; a cash flow report for all periods since the Petition Date, including a comparison of actual results to the projections set forth in the Budget; and any other information Vectra may reasonably request.

d. The Nitro Debtors shall maintain insurance as required by the Loan Documents and Security Documents on all insurable property now or hereafter owned by it against such risks and to the extent customary in its industry, which shall include, but not be limited to, insurance on all real property and improvements, equipment, and inventory, against all reasonably insurable hazards. The Nitro Debtors shall further maintain or cause to be maintained public liability and worker’s compensation insurance, in reasonable amounts.

e. On an interim basis until a final hearing on the Motion, the Nitro Debtors, with the consent of the Vectra, may keep and maintain their existing accounts open with

Vectra as debtor-in-possession accounts and the Nitro Debtors shall segregate, remit, and deposit all cash receipts, Cash Collateral and all proceeds from the sale, transfer or other disposition of the and all other proceeds of such Prepetition Collateral of any kind which is now or shall come into the possession or control of the Nitro Debtors, or to which the Nitro Debtors are now or shall become entitled, into those debtors in possession bank accounts (collectively, the “**Deposit Account**”), and such collections and proceeds (a) shall be subject to and (b) shall be treated in accordance with the attached proposed Agreed Interim Cash Collateral Order. The Nitro Debtors shall not commingle the Cash Collateral, or the proceeds thereof, with any other funds. All funds deposited in the Deposit Account shall be deemed Cash Collateral.

23. The Nitro Debtors prepared a cash flow budget setting forth all projected cash receipts and cash disbursements for operations on a weekly basis during the first thirteen (13) weeks (the “**Budget Period**”) of the Nitro Debtors’ chapter 11 cases (as such budget may be modified from time to time by the Debtor, the “**Initial Approved Budget**”), a copy of which is attached hereto as **Exhibit A**. As set forth in the Initial Approved Budget, the Nitro Debtors intend to use Cash Collateral for, among other things, critical, necessary ongoing operational expenses, insurance, employee payroll and payroll expenses, professional services, supplies, maintenance and repairs, taxes, and utilities, and administrative costs and expenses of the Nitro Debtors incurred in the chapter 11 cases. The Nitro Debtors will adhere to the Initial Approved Budget during the Budget Period, subject to a permitted variance between the aggregate actual disbursements on a consolidated basis and the amounts projected in the Approved Budget of 10% in the aggregate, measured every week on a rolling basis. The Initial Approved Budget was relied upon by Vectra in consenting to the terms and conditions in the Agreed Interim Cash Collateral Order and the Nitro Debtors’ use of Cash Collateral.

24. The terms and conditions on which the Nitro Debtors may use Cash Collateral have been carefully designed to meet the dual goals of §§ 361 and 363. If the Agreed Interim Cash Collateral Order is entered, the Nitro Debtors will have ample working capital to operate their businesses and provide an opportunity to maximize value for the benefit of stakeholders. At the same time, consistent with the purposes underlying the provision of adequate protection, the proposed Agreed Interim Cash Collateral Order provides Vectra with adequate protection (as set forth in detail above) to protect it from any diminution in value during the chapter 11 cases

25. The Nitro Debtors believe the terms of the Cash Collateral arrangement described herein and in the proposed Agreed Interim Cash Collateral Order are fair and reasonable, reflect the Nitro Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms concerning the Nitro Debtors’ use of Cash Collateral as provided for in the proposed Agreed Interim Cash Collateral Order were negotiated in good faith and at arms’ length between the Nitro Debtors and Vectra. Further, Vectra consents to the use of Cash Collateral under the terms of the proposed Agreed Interim Cash Collateral Order in good faith as that term is used in § 363 of the Code and is entitled to the benefits attendant to such a finding.

**REQUEST FOR EXPEDITED HEARING FOR INTERIM RELIEF
UNDER FED R. BANKR. P. 4001(b)(2) and L.B.R. 4001-1(b)**

26. Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedure provides:

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(b)(2).

27. Local Bankruptcy Rule 4001-2(b) provides:

When Financing Motions are filed with the Court on or shortly after the date of the entry of the order for relief pursuant to L.B.R. 2081-1, the Court may grant interim relief pending review by the interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. The Court may deny the interim relief requested in the absence of a reasonable opportunity to object.

L.B.R. 4001-2(b).

28. In this case, immediate and irreparable harm would result if the relief requested in the motion is not granted on an interim basis pending the Final Hearing. The Nitro Debtors have a critical need for use of Cash Collateral to pay operating expenses associated with its business operations. The Nitro Debtors lack sufficient available sources of working capital and financing to operate, reorganize or effectuate an orderly wind-down of its remaining business. Use of the Cash Collateral is necessary to the Nitro Debtors' ability to preserve and maintain going-concern value of their businesses for the benefit of creditors and all parties in interest.

29. Failure to grant the relief requested herein on an interim basis would result in immediate and irreparable harm to the Debtor's estate. Without the use of the Cash Collateral, the Nitro Debtors will have insufficient funding to permit, among other things, the orderly continuation of the operation of its businesses, maintain business relationships with vendors, suppliers and customers, make payroll, and satisfy other working capital needs and other costs associated with Nitro Debtors' business operations. Absent the relief requested herein, the Nitro Debtors' operations will be brought to an immediate halt, with damaging consequences for the Nitro Debtors' and their bankruptcy estates and creditors. Accordingly, the use of Cash Collateral during the interim period is necessary to avoid immediate and irreparable harm to the Nitro Debtors' bankruptcy estates.

30. Based on the foregoing, the Nitro Debtors respectfully submit the requirements

of Fed. R. Bankr. P. 4001(b)(2) and L.B.R. 4001-2(b) supporting an expedited preliminary hearing and immediate cash collateral availability on an interim basis are satisfied. Accordingly, the Nitro Debtors seek immediate authority to use Cash Collateral, pursuant to the terms and conditions in the Interim Order to prevent immediate and irreparable harm to the Nitro Debtors' estate pending the Final Hearing pursuant to Fed. R. Bankr. P. 4001(b)(2) and L.B.R. 4001-2(b).

RESERVATION OF RIGHTS

31. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Nitro Debtors; (b) a waiver of the Nitro Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to § 365; or (e) otherwise affect the Nitro Debtors' rights under § 365 to assume or reject any executory contract with any party subject to this motion.

NOTICE

32. In accordance with L.B.R. 2081-1(b), Debtor NITROcrete, LLC filed contemporaneously with this motion a *Motion Seeking Expedited Entry of Orders and Notice of Impending Hearing Thereon* (the "**Motion for Expedited Hearing**") in its chapter 11 case, case no. 21-15739. In accordance with L.B.R. 2081-1(b), a copy of the Agreed Interim Cash Collateral Order filed with this motion, along with the Motion for Expedited Hearing, L.B.F. 2081-1.1 Cover Sheet for Motion Seeking Expedited Entry of Order(s) and Notice of Impending Hearings Thereon, First Day Declaration, L.B.R. 2081-1.2 Notice of Filing of Chapter 11 Debtor's Motion Seeking Expedited Entry of Order(s), and L.B.R. 2081-1.3 Response and Request for Notice of Hearing, will be served by hand delivery, over-night mail, facsimile, or email to: (i) the Office of the United States Trustee; (ii) the 20 largest unsecured creditors; (iii) all secured creditors; (iv) the IRS and other relevant government agencies; (v) all parties who have requested notice; and (vi) any party whose interest in property of the estate will be directly affected by the relief requested in this motion.

33. In accordance with Fed. R. Bankr. P. 4001(b)(1)(C) and L.B.R. 4001-2, a copy of this motion, and all attachments and the Agreed Interim Cash Collateral Order will be served on the Office of the United States Trustee, Vectra and the 20 largest unsecured creditors.

CONCLUSION

WHEREFORE, the Debtor respectfully requests, pursuant to § 362(c)(2)(A), Fed. R. Bankr. P. 4001(b) and 9014, and L.B.R. 4001-2, 2081-1 and 9013-1, entry of an order on an expedited basis, substantially in the form of the Agreed Interim Cash Collateral Order attached hereto, authorizing use of cash collateral on an interim basis, granting adequate protection to Vectra in connection therewith, entry of a final order authorizing use of cash collateral, setting a Final Hearing on use of Cash Collateral, and granting related relief., and (c) grant such other and further relief as may be just and proper.

Dated: November 18, 2021

Respectfully submitted,

MARKUS WILLIAMS YOUNG &
HUNSICKER LLC

By: /s/ Matthew T. Faga

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Proposed Counsel for the Debtor-In-Possession

NITROcrete, LLC
Weekly Cash Flow

| | Week 1 | Week 2 | Week 3 | Week 4 | Week 5 | Week 6 | Week 7 | Week 8 | Week 9 | Week 10 | Week 11 | Week 12 | Week 13 |
|-----------------------------------|------------------|--------------------|------------------|--------------------|------------------|--------------------|-------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Week Ending | 11/26/2021P | 12/3/2021P | 12/10/2021P | 12/17/2021P | 12/24/2021P | 12/31/2021P | 1/7/2022P | 1/14/2022P | 1/21/2022P | 1/28/2022P | 2/4/2022P | 2/11/2022P | 2/18/2022P |
| Beginning Cash | \$575,775 | \$822,035 | \$717,909 | \$926,331 | \$824,218 | \$821,512 | \$469,839 | \$399,892 | \$257,809 | \$126,983 | (\$8,548) | (\$527,968) | (\$667,868) |
| Sources | | | | | | | | | | | | | |
| AR Collections | \$246,260 | \$131,417 | \$317,887 | \$33,052 | \$39,400 | \$2,492 | \$22,384 | \$3,439 | \$2,492 | \$2,492 | \$6,640 | \$4,148 | \$4,148 |
| NITROcrete Canada Shared Services | | \$5,000 | | | | | \$5,000 | | | | \$5,000 | | |
| NITROcrete Mexico Shared Services | | \$5,000 | | | | | \$5,000 | | | | \$5,000 | | |
| Total | \$246,260 | \$141,417 | \$317,887 | \$33,052 | \$39,400 | \$2,492 | \$32,384 | \$3,439 | \$2,492 | \$2,492 | \$16,640 | \$4,148 | \$4,148 |
| Uses | | | | | | | | | | | | | |
| COGS | - | - | (\$94,392) | (\$4,142) | (\$4,142) | (\$165,642) | (\$44,142) | (\$5,247) | (\$5,247) | (\$5,247) | (\$196,293) | (\$3,773) | (\$3,773) |
| Payroll Paid | - | (\$123,451) | - | (\$123,451) | - | (\$123,451) | - | (\$123,451) | - | (\$123,451) | - | (\$123,451) | - |
| Health Insurance Paid | - | (\$3,920) | - | - | (\$30,391) | - | (\$4,508) | - | (\$34,950) | - | (\$4,508) | - | (\$34,950) |
| Insurance | - | (\$6,109) | - | - | - | - | (\$6,109) | - | - | - | (\$206,109) | - | - |
| Facility | - | (\$35,000) | - | - | - | - | (\$10,000) | - | - | - | (\$10,000) | - | - |
| Professional Fees Paid | - | - | (\$2,000) | (\$2,000) | (\$2,000) | (\$2,000) | (\$2,000) | (\$2,000) | (\$2,000) | (\$2,000) | (\$4,000) | (\$2,000) | (\$2,000) |
| Property Taxes Paid | - | - | - | - | - | (\$10,000) | - | - | - | - | (\$15,000) | - | - |
| Other Operating Expenses | - | (\$7,064) | (\$5,573) | (\$5,573) | (\$5,573) | (\$5,573) | (\$5,573) | (\$7,325) | (\$91,122) | (\$7,325) | (\$14,650) | (\$7,325) | (\$98,739) |
| Software | - | (\$25,000) | - | - | - | - | (\$25,000) | - | - | - | (\$25,000) | - | - |
| Special Counsel - IP | - | (\$5,000) | - | - | - | - | (\$5,000) | - | - | - | (\$5,000) | - | - |
| Bankruptcy Counsel | - | (\$20,000) | - | - | - | (\$20,000) | - | - | - | - | (\$20,000) | - | - |
| Financial Advisor | - | - | - | - | - | (\$7,500) | - | - | - | - | (\$7,500) | - | - |
| Investment Bank | - | (\$20,000) | - | - | - | (\$20,000) | - | - | - | - | (\$20,000) | - | - |
| US Trustee | - | - | - | - | - | - | - | - | - | - | (\$8,000) | - | - |
| Noticing Agent | - | - | (\$7,500) | - | - | - | - | (\$7,500) | - | - | - | (\$7,500) | - |
| Administrative Costs | - | (\$45,000) | (\$7,500) | - | - | (\$47,500) | (\$5,000) | (\$7,500) | - | - | (\$60,500) | (\$7,500) | - |
| Change in Cash | \$246,260 | (\$104,126) | \$208,422 | (\$102,113) | (\$2,706) | (\$351,673) | (\$69,947) | (\$142,083) | (\$130,826) | (\$135,530) | (\$519,420) | (\$139,900) | (\$135,313) |
| Ending Cash | \$822,035 | \$717,909 | \$926,331 | \$824,218 | \$821,512 | \$469,839 | \$399,892 | \$257,809 | \$126,983 | (\$8,548) | (\$527,968) | (\$667,868) | (\$803,181) |

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

| | | |
|---------------------------|---|-----------------------|
| In re |) | |
| |) | |
| NITROCRETE, LLC |) | Case No. 21-15739-KHT |
| EIN: 84-4321060 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |
| <hr/> | | |
| In re |) | |
| |) | |
| NITRO HOLDINGS, LLC |) | Case No. 21-15740 |
| EIN: 84-4342645 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |
| <hr/> | | |
| In re |) | |
| |) | |
| NITROCRETE IP, LLC |) | Case No. 21-15741 |
| EIN: 84-4364002 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |
| <hr/> | | |
| In re |) | |
| |) | |
| NITROCRETE EQUIPMENT, LLC |) | Case No. 21-15742 |
| EIN: 84-4360818 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession. |) | |
| <hr/> | | |
| In re |) | |
| |) | |
| NITROCRETE HOLDINGS, LLC |) | Case No. 21-15743 |
| EIN: 85-3946334 |) | |
| |) | Chapter 11 |
| Debtor-in-Possession |) | |
| <hr/> | | |

AGREED INTERIM ORDER (I) AUTHORIZING USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO VECTRA BANK, (III) SCHEDULING A FINAL HEARING, AND (IV) GRANTING RELATED RELIEF

This Matter came before the Court on the Motion for Entry of (I) Agreed Order Authorizing Interim Use of Cash Collateral (II) Authorizing Final Use of Cash Collateral, (III) Granting Adequate Protection to Vectra Bank, (IV) Setting A Final Hearing On Use of Cash Collateral, and (IV) Granting Related Relief (the “Motion”) filed by NITROcrete, LLC, Nitro Holdings, LLC, NITROcrete IP, LLC, NITROcrete Equipment, LLC, and NITROcrete Holdings, LLC, the above-captioned Debtors and Debtors in possession (collectively, the “Debtors”) on November 18, 2021, in the above-captioned lead Chapter 11 case (the “Case”) pursuant to section 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (as amended, the “Code”), Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure, requesting, among other things, entry of this interim order (this “Interim Order”):

- I. Authorizing the Debtors to use cash collateral (as such term is defined in section 363(a) of the Code, “Cash Collateral”) from the Petition Date through the time of the hearing on the Motion on a final basis, pursuant to the terms and conditions set forth in this Interim Order;
- II. Scheduling a final hearing on the Motion to consider entry of a Final Order;
- III. Authorizing the Debtors to provide adequate protection to Zions Bancorporation, N.A. dba Vectra Bank Colorado (the “Bank”) for the use of Cash Collateral.

This Court having conducted an expedited interim hearing (the “Interim Hearing”) on November 23, 2021, to consider the Motion and the relief requested herein, and after considering all the pleadings filed with the Court, and after consideration of the evidence presented at the Interim Hearing, and having found that, under the circumstances, due and sufficient notice of the

Motion and the Interim Hearing was provided by the Debtors in accordance with Fed. R. Bankr. P. 2002, 4001, and 9014 and all applicable local rules, and it appearing that approval of the relief requested in the Motion is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is a sound and prudent exercise of the Debtors' business judgment, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

REPRESENTATIONS

The Debtors and the Bank agree and represent as follows, none of which shall be findings of this Court or binding on any third-parties:

A. Petition Date. On November 18, 2021, (the "Petition Date"), the Debtors filed voluntary petitions with this Court to commence these Cases under Chapter 11 of the Code. Since the Petition Date, the Debtors have remained in possession and control of their assets as debtors-in-possession pursuant to sections 1107 and 1108 of the Code. No trustee or statutory committee of unsecured creditors (a "Committee") has been appointed.

B. Pre-Petition Indebtedness. In connection with this Interim Order, the Debtors acknowledge and agree that:

i. Prior to the Petition Date, Debtors and the Bank entered into a Credit and Security Agreement dated as of February 6, 2020 as amended by the First Amendment To Credit and Security Agreement dated as of January 8, 2021 and as further amended by the Joinder and Second Amendment to Credit and Security Agreement dated as of July 21, 2021 (collectively as amended restated, supplemented or otherwise modified from time to

time, the “Credit Agreement”) with Bank. The Credit Agreement, amendments thereto, and all documents, instruments, and agreements executed in connection therewith or related thereto are hereinafter referred to as the “Loan Documents.”

ii. Pursuant to the Loan Documents, Debtors, incurred loan obligations (the “Secured Obligations”) in favor of Bank, which Obligations were in default as of the Petition Date. As of the Petition Date, the Secured Obligations owed to Bank without defense, counterclaim or offset of any kind, totaled no less than \$7,214,270.86, *plus* accrued and unpaid interest with respect thereto and any additional fees, costs, expenses, and other obligations incurred in connection therewith now or hereafter due under the Loan Documents.

iii. The Loan Documents are valid and binding agreements and obligations of the Debtors, and the Debtors are unaware of any claim, counterclaim, setoff, recoupment, expense, subordination, or defense of any kind or nature which would in any way affect the validity, enforceability, and non-voidability of the Obligations, or which would reduce or affect the obligation of the Debtors to pay any of such Obligations.

iv. As set out in the Loan Documents, as security for the Obligations, Debtors grant to or for the benefit of Bank a first priority valid, perfected and enforceable security interest (the “Prepetition Liens”) against all collateral pledged by the Debtors and previously perfected by the Bank as of the Petition Date to secure repayment of the Obligations under the Loan Documents the “Prepetition Collateral”).¹

¹ For clarity, the Prepetition Collateral does not include titled vehicles owned by NITROcrete Equipment, LLC (the “Titled Vehicles”).

v. The Loan Documents remain in full force and effect and constitute legal, valid and binding obligations of the Debtors; (b) no offsets, rights of recoupment, defenses or counterclaims to the Secured Obligations exist; (c) no portion of the Secured Obligations is subject to challenge, avoidance, recharacterization, disallowance, reduction or subordination (whether equitable or otherwise) pursuant to the Code or applicable non-bankruptcy law; (d) the Loan Documents are valid and enforceable by Bank against the Debtors; (e) the liens and security interests of Bank constitute valid, binding, enforceable and perfected liens in and to the Prepetition Collateral, having the priority set forth in the Loan Documents, and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Code or applicable non-bankruptcy law; and (f) no claim of or cause of action held by the Debtors exists against the Bank or their agents, whether arising under applicable state or federal law (including, without limitation, any “lender liability” causes of action or recharacterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Code), or whether arising under or in connection with any of the Loan Documents (or the transactions contemplated thereunder), Secured Obligations or Prepetition Liens, including without limitation, any right to assert any disgorgement or recovery.

vi. All of the Debtors’ cash and cash equivalents, including any cash in deposit accounts, wherever located, and all cash that constitutes proceeds of Prepetition Collateral (as defined in the Loan Documents) are part of the Prepetition Collateral and, therefore, are Cash Collateral subject to the Prepetition Liens of Bank.

vii. The Debtors' cash, negotiable instruments, deposit accounts, or other cash equivalents in any form, including without limitation income, proceeds, products, revenues or profits of property or cash arising from the collection, sale, lease, disposition, use, or conversion to cash of any property, or fees, charges, accounts, or other payments and such other forms of property as are contemplated under 11 U.S.C. § 363, constitute cash collateral of Bank governed by section 363 of the Code, whether Bank's liens or security interests (including, without limitation, any replacement liens or security interests) existed at the commencement of this case or arise thereafter pursuant to this Order or any other order of the Court or applicable law or otherwise, and whether such property that has been converted to cash existed as of the Petition Date or arose or was generated thereafter (collectively, the "Cash Collateral").

viii. The Debtors represent that they are without sufficient funds to support its continuing operations unless they are permitted to use Cash Collateral and in critical needs of funds during the pendency of their chapter 11 cases, and the present circumstances require that Debtors be permitted to make use of the Cash Collateral, on the terms set out herein.

ix. Bank has agreed to consent to the use of its Cash Collateral subject to the terms and conditions of this Order.

C. Consensual Budget. Attached hereto as Exhibit A is a 12-week cash flow budget setting forth all projected cash receipts and cash disbursements (by line item) on a weekly basis (the "Initial Approved Budget"). To the best information, knowledge and belief of the Debtor, the use of Cash Collateral set forth in the Budget is sufficient to fully pay the obligations incurred by

the Debtor on and after the Petition Date and for the time period set forth in the Budget. The Initial Approved Budget may be modified or supplemented from time to time by additional budgets (covering any time period covered by a prior budget or covering additional time periods) prepared by the Debtors and that are consented to by Bank, without subsequent notice to or order of the Court (each such additional budget, a “Supplemental Approved Budget” and together with the Initial Approved Budget, the “Approved Budget”). The Initial Approved Budget is an integral part of this Interim Order and has been relied upon by Bank in consenting to this Interim Order, to permit the use of the Cash Collateral. The Debtors shall be permitted a variance between the aggregate actual disbursements on a consolidated basis and the amounts projected in the Approved Budget of 10% in the aggregate, measured every week on a rolling basis. Unless Bank consents in writing, the Debtor shall not pay any items greater than \$1,000 that are not described in the Budget or that fall outside the categories described in the Budget. As for postpetition cash receipts, the Debtors may vary from the amounts projected in the Approved Budget, provided it continues to maintain sufficient liquidity to pay its postpetition obligations as they come due. Commencing December 3, 2021, and every week thereafter, the Debtors shall provide the Bank with a report of actual cash receipts and disbursements for the prior week, with a comparison to the forecast in the Approved Budget and a written narrative as to variances.

D. Reasonable; Good Faith. The terms of the Cash Collateral arrangement described in this Interim Order are fair and reasonable, reflect the Debtors’ exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms concerning the Debtors’ use of Cash Collateral as provided for in this Interim Order were negotiated in good faith and at arms’ length between the Debtors and

Bank. Bank is consenting to the use of Cash Collateral under the terms of this Interim Order in good faith as that term is used in section 363 of the Code and is entitled to the benefits attendant to such finding.

E. Use of Cash Collateral. An immediate and critical need exists for the Debtors to use the Cash Collateral. The Debtors have represented that they lack sufficient available sources of working capital and financing to operate, reorganize or effectuate an orderly wind-down of its remaining business. Without the use of Cash Collateral, the continued operation of the Debtors' business and the preservation of the value of the Debtors' remaining assets would not be possible. Accordingly, the Debtors and their estates would suffer immediate and irreparable harm unless the Debtors are authorized to use Cash Collateral on the terms and conditions set forth herein.

F. Good Cause Shown; Best Interest. The Debtors has requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2). Absent entry of this Interim Order, the Debtors' business, property, and the estates will be immediately and irreparably harmed.

A. ORDER AND JUDGMENT

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefore, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Jurisdiction. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (D), (G), (K), (M) and (O). The statutory predicates for the relief sought herein are sections 105, 361, 362, 363 and 507 of the Code and Bankruptcy Rules 2002, 4001 and 9014.

2. **Notice.** The Interim Hearing with respect to the Motion was held pursuant to the authorization of Federal Rule of Bankruptcy Procedure 4001 and L.B.R. 2081-1(c). Notice was served on the parties listed on the certificate of service filed with the Motion in the manner set forth in the certificate. Under the circumstances, such notice of the Motion, the relief requested therein and the Interim Hearing complies with Bankruptcy Rule 4001 and L.B.R. 2081-1(c).

3. **Approval of Interim Order.** This Court concludes that good cause has been shown and that entry of this Interim Order is in the best interest of the Debtors' estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors' existing businesses, and enhance the Debtors' prospects of maximizing the value of their assets. The Motion is approved on an interim basis and on the terms and conditions set forth in this Interim Order. This Interim Order shall become effective immediately upon its entry. All objections to the entry of this Interim Order that have not been withdrawn are hereby overruled.

4. **Use of Cash Collateral.** The Debtor has an immediate need to use Cash Collateral in order to permit, among other things, the orderly continuation of the operation of its businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll and to satisfy other working capital needs. The ability of the Debtor to obtain sufficient working capital and liquidity through the use of Cash Collateral is vital to the preservation and maintenance of the going concern value of the Debtor and to a successful reorganization of the Debtor. The Debtors lack sufficient available sources of working capital and financing to operate, reorganize or effectuate an orderly wind-down of its remaining business. Without the use of Cash Collateral, the continued operation of the Debtors' business and the preservation of the value of the Debtors' remaining assets would not be possible. Accordingly, the Debtors and their estates would suffer

immediate and irreparable harm unless the Debtors are authorized to use Cash Collateral on the terms and conditions set forth in this Interim Order. The proposed use of Cash Collateral is necessary and appropriate for the continued operation of the Debtor's businesses and management and preservation of its assets.

5. Good Cause Shown; Best Interest. The Bank is willing to consent to the use of Cash Collateral in accordance with the Budget and subject to the terms and conditions set forth herein. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b) and 4001(d). The use of Cash Collateral in accordance with this Interim Order is in the best interest of the Debtor's estate. Absent entry of this Interim Order, the Debtors' business, property, and the estates will be immediately and irreparably harmed. Thus, good, adequate and sufficient cause has been shown to justify the granting of the relief requested in the Motion. The terms of the Cash Collateral arrangement described in this Interim Order are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration. The terms concerning the Debtors' use of Cash Collateral as provided for in this Interim Order were negotiated in good faith and at arms' length between the Debtors and Bank.

6. Limited Authorization to Use Cash Collateral/Insurance/Taxes. From the Petition Date to the Termination Date (defined below) (the "Interim Period") and in strict compliance with this Interim Order, Debtors shall pay from the Deposit Accounts (defined below) the current, normal, actual, ordinary, and reasonable post-petition expenses of operating and maintaining the businesses (the "Post-Petition Expenses"), which amounts and the extent of said payments are categorized and enumerated in the Approved Budget. Debtors shall pay all post-

petition taxes, including but not limited to payroll, ad valorem, and other taxes as they come due in the ordinary course of Debtors' business.

7. **Termination.** The Debtors' right to use the Cash Collateral as herein authorized shall terminate (a "Termination") on 5:00 p.m. (prevailing mountain time) on December 17, 2021 or as otherwise ordered by the Court (the "Termination Date"). Any Termination shall not affect the validity, priority or enforceability of any and all rights, remedies, benefits and protections provided to Bank under this Interim Order as of the Termination Date, which rights, remedies, benefits and protections shall survive such Termination.

8. **Insurance.** Debtors shall maintain insurance as required by the Loan Documents and Security Documents on all insurable property now or hereafter owned by it against such risks and to the extent customary in its industry, which shall include, but not be limited to, insurance on all real property and improvements, equipment and inventory, against all reasonably insurable hazards. Debtors shall further maintain or cause to be maintained public liability and worker's compensation insurance, in reasonable amounts.

9. **Deposit Accounts.** The Bank is an authorized depository by the Office of the United States Trustee for the District of Colorado. The Bank is willing to establish the required debtor-in-possession accounts for the Debtors. On an interim basis until a final hearing on the Motion, Debtors with the consent of the Bank may keep and maintain their existing accounts open with the Bank as debtor-in-possession accounts and the Debtors shall segregate, remit, and deposit all cash receipts, Cash Collateral and all proceeds from the sale, transfer or other disposition of the and all other proceeds of such Prepetition Collateral of any kind which is now or shall come into the possession or control of the Debtors, or to which the Debtors is now or shall become entitled,

into those debtor-in-possession bank accounts (collectively, the “Deposit Account”), and such collections and proceeds (a) shall be subject to and (b) shall be treated in accordance with this Interim Order. Debtors shall not comingle the Cash Collateral, or the proceeds thereof, with any other funds. All funds deposited in the Deposit Account shall be deemed Cash Collateral.

10. Reporting. The Debtors shall comply with all reporting requirements set forth in the Loan Documents and this Interim Order. The Debtors shall file monthly operating reports with the Court each month as required by the U.S. Trustee and concurrently serve copies upon counsel for Bank and the U.S. Trustee. Additionally, the Debtors shall timely report as and to the extent provided in Paragraph C, and shall provide to Bank on a weekly basis (commencing December 1, 2021 and every week thereafter):

- a. collection reports of accounts receivable and cash sales,
- b. a listing of new accounts receivable and invoices relating to the same,
- c. an aging report of accounts receivable and accounts payable;
- d. a cash flow report for all periods since the Petition Date, including a comparison of actual results to the projections set forth in the Approved Budget as described in Paragraph C of this Interim Order; and
- e. any other information that Bank reasonably requests.

11. Adequate Protection. Bank is hereby granted, to the extent of the diminution in value of the Prepetition Liens in the Prepetition Collateral from and after the Petition Date, the following (collectively, the “Adequate Protection Obligations”):

- (a) Adequate Protection Liens. Bank is hereby granted valid, enforceable, unavoidable and fully perfected replacement liens and security interests (the “Adequate

Protection Liens”) in all prepetition and postpetition assets and property (tangible, intangible, real, personal, and mixed) of the Debtors whether now existing or hereafter acquired or arising, and wherever located, including but not limited to all contracts, accounts, deposit accounts, chattel paper, inventory, equipment, general intangibles, goods, real property, leases, cash and cash equivalents (including any funds released to the Debtors from escrow or other segregated accounts), claims, causes of action and proceeds thereof (the “Postpetition Collateral,” and together with the Prepetition Collateral, the “Collateral”); provided, however, that Postpetition Collateral shall not include (i) the claims and causes of action of the Debtors or its estate under sections 502(d), 544, 545, 547, 548, 550 and 553 and any other avoidance actions under the Code (collectively, the “Avoidance Actions”), (ii) commercial tort claims or any proceeds thereof; (iii) Titled Vehicles or any proceeds thereof; or (iv) property received or recovered in respect of any Avoidance Actions, whether by judgment, settlement or otherwise, whether pursuant to federal law or applicable state law (collectively, “Avoidance Action Proceeds”). The Adequate Protection Liens shall be supplemental to and in addition to the Prepetition Liens, shall attach with the same priority as enjoyed by the Prepetition Liens immediately prior to the Petition Date. The Adequate Protection Liens shall be deemed to be legal, valid, binding, enforceable, perfected liens, not subject to subordination or avoidance, for all purposes. The Adequate Protection Liens shall be in the same relative validity and priority in the Postpetition Collateral as Bank’s liens existed in the Prepetition Collateral. The Adequate Protection Liens shall not be subordinated or be made *pari passu* with any other lien under sections 363 and 364 of the Code or otherwise. The Adequate Protection Liens

shall be deemed to be perfected automatically upon the entry of this Interim Order, without the necessity of filing of any UCC-1 financing statement, state or federal notice, mortgage or other similar instrument or document in any state or public record or office and without the necessity of taking possession or control of any collateral.

(b) Bank's Superpriority Claims. Bank is hereby granted superpriority administrative expense claims (the "Superpriority Claims") under sections 503 and 507 of the Code against the Debtors' estates to the extent that the Adequate Protection Liens do not adequately protect against the diminution in value of the Prepetition Collateral, if any, which Superpriority Claims, if any, shall have priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Code, including, but not limited to, Code sections 503(b), 507(a), 507(b), 546(c), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of this case pursuant to section 1112 of the Code. The Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Code, be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, excluding however, Avoidance Action Proceeds.

(c) Right to Seek Additional Adequate Protection. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of Bank to seek additional forms of adequate protection or additional restrictions on the Debtors' use of Cash Collateral at any time.

(d) Section 552. Bank's liens upon and security interests in the Prepetition Collateral shall continue in the proceeds and profits of the Prepetition Collateral as

provided in 11 U.S.C. § 552(b)_as further described in the Loan Documents including without exception, all postpetition inventory and accounts receivable.

12. Investigation Rights/Representations Not Binding on Other Parties. Nothing in this Interim Order, nor any of the representations or agreements made by the Debtors and/or the Bank herein shall impair, effect or preclude the rights of any party in interest (other than the Debtors) to investigate the validity, perfection and enforceability of the Prepetition Liens and the Secured Obligations, or to assert any challenges, claims or causes of action against Bank.

13. Default, Termination of Cash Collateral Usage, and Other Remedies. Anything in this Interim Order to the contrary notwithstanding, the Debtors shall be prohibited from using the Cash Collateral, absent further order of this Court, upon Termination, including Termination effected through the service by Bank of written notice to the Debtors and its counsel, the Court, any Committee and its counsel (as and to the extent applicable) and the U.S. Trustee that an Event of Default has occurred and is continuing. For purposes of this Interim Order, an “Event of Default” shall occur upon:

- (a) The failure by the Debtors to comply with any of the material terms or conditions of this Interim Order, including, without limitation, the failure by the Debtors to comply with the Approved Budget pursuant to the terms of Paragraph C;
- (b) Without the prior written consent of Bank, the appointment of a Chapter 11 trustee or examiner;
- (c) Without the prior written consent of Bank, the issuance to a taxing authority or the granting of a motion seeking to grant a third party a security interest or lien upon all or part of any

property of the Debtors that has a priority which is senior to, or equal with, Bank's Prepetition Liens or the Adequate Protection Liens in all or any portion of such property;

- (d) Without the prior written consent of Bank, the granting by the Court of a motion for relief from the automatic stay in favor of any party, other than Bank, with respect to any material portion of the Prepetition Collateral or Postpetition Collateral (including, but not limited to, any Cash Collateral); or
- (e) The conversion of any this case to a case under Chapter 7 of the Code;
- (f) Without the prior written consent of Bank, the granting of any motion to amend or modify the terms of this Interim Order.

14. Automatic Effectiveness of Liens. The Adequate Protection Liens shall attach and become valid, perfected, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors or Bank and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, security agreements, vehicle lien applications, mortgages, filings with the U.S. Patent and Trademark Office or other documents or the taking of any other actions. If Bank requests that the Debtors execute and deliver to Bank financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by such agent to be reasonably necessary or desirable to further evidence the perfection of the Adequate Protection Liens, the Debtors is hereby authorized and directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and Bank is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Code, in which event all such documents shall be

deemed to have been filed or recorded at the time and on the date of entry of this Interim Order.

15. Binding Effect. The provisions of this Interim Order shall be binding upon and inure to the benefit of Bank, the Debtors, any Committee appointed in this case, and their respective successors and assigns (including any Chapter 7 or Chapter 11 trustee hereinafter appointed or elected for the Debtors' estate, an examiner appointed pursuant to section 1104 of the Code or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property of the estate of the Debtors). To the extent permitted by applicable law, this Interim Order shall bind any trustee hereafter appointed for the estate of the Debtors, whether in this Chapter 11 proceeding or, in the event of the conversion, to any liquidation under Chapter 7 of the Code. Such binding effect is an integral part of this Interim Order.

16. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of liquidation or reorganization in this Chapter 11 proceeding; (ii) converting this Chapter 11 proceeding to Chapter 7; or (iii) dismissing this Chapter 11 proceeding, and the terms and provisions of this Interim Order as well as the Adequate Protection Liens and Superpriority Claims granted pursuant to this Interim Order shall continue in full force and effect notwithstanding the entry of any such order. Such claims and liens shall maintain their priority as provided by this Interim Order, and to the maximum extent permitted by law, until all of the Obligations and the Adequate Protection Obligations are indefeasibly paid in full and discharged. If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect the validity, priority or enforceability of any Adequate Protection Obligations incurred prior to actual receipt of written notice to Bank of the effective date of such reversal, stay,

modification or vacatur. Prior to actual receipt of written notice by Bank of the effective date of any reversal, stay, modification or vacatur, any use of Collateral (including Cash Collateral) or any Adequate Protection Obligations incurred by the Debtors hereunder, as the case may be, shall be governed in all respects by the original provisions of this Interim Order, and Bank shall be entitled to all of the rights, remedies, privileges and benefits, including the Adequate Protection Obligations, provided thereunder.

17. Effect of Dismissal/Conversion. If this Chapter 11 proceeding is dismissed, converted or substantively consolidated, then neither the entry of this Interim Order nor the dismissal, conversion or substantive consolidation of this Chapter 11 proceeding shall affect the rights of Bank under the Loan Documents or this Interim Order, and all of the respective rights and remedies thereunder of Bank shall remain in full force and effect as if this Chapter 11 proceeding had not been dismissed, converted, or substantively consolidated. If an order dismissing this Chapter 11 proceeding is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Code) that: (i) those Prepetition Liens, Adequate Protection Liens and Superpriority Claims granted to and conferred upon Bank, as applicable, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all Obligations shall have been paid and satisfied in full (and that such Superpriority Claims shall, notwithstanding such dismissal, remain binding on all interested parties); and (iii) to the greatest extent permitted by permissible law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the Prepetition Liens, Adequate Protection Liens, and Superpriority Claims referred to herein.

18. Retention of Jurisdiction. The Bankruptcy Court shall retain exclusive jurisdiction to hear and determine any and all disputes or matters under, or arising out of or in connection with, this Interim Order.

19. Order Effective. This Interim Order shall be effective as of the date of the signature by the Court and, notwithstanding anything to the contrary in Bankruptcy Rules 4001(a)(3) or 6004(h), shall not be stayed absent the grant of a stay under Bankruptcy Rule 8005 after a hearing upon notice to the Debtors and Bank.

20. Controlling Effect of Interim Order. To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion or any prepetition agreement, the provisions of this Interim Order shall control.

21. Final Hearing. A final hearing on the Motion shall be heard before this Court on [___], 2021 at [__:___.m.] in Courtroom [_] at the United States Bankruptcy Court, 19th Steet, Denver, CO 80203. Any objections shall be filed with the Bankruptcy Court on or before [____], 2021 at 4:00 p.m. and served upon counsel for the Debtors and Bank.

Dated: November ____, 2021

BY THE COURT

UNITED STATES BANKRUPTCY JUDGE